

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Pacific Gas and Electric Company Annual Earnings Assessment Proceeding (AEAP) for Approval of Energy Efficiency Shareholder Incentives for 2000 Program Year Accomplishments, 2000 Accomplishments for Pre-1998 Programs, Second Claim for Incentives for the 1999 Accomplishments for Pre-1998 Programs, and Third Claim for Incentives for the 1996 Program Year Accomplishments.

Application 01-05-003  
(Filed May 1, 2001)

And Consolidated Applications.

Application 01-05-009  
Application 01-05-017  
Application 01-05-018  
Application 00-05-002  
Application 00-05-003  
Application 00-05-004  
Application 00-05-005

**ADMINISTRATIVE LAW JUDGE'S RULING**

This ruling requests all parties to comment on whether the Commission should, based on these comments, reopen Rulemaking (R.) 91-08-003/ Investigation (I.) 91-08-002 to modify the incentive mechanism adopted in Decision (D.) 94-10-059 for the shareholder incentives before us in this proceeding and in future Annual Earnings Assessment Proceedings (AEAP). This question arises due to the level of profits presently being earned by respondent utilities for energy efficiency programs they successfully administered prior to 1998. This ruling also requests the Office of Ratepayer

Advocates (ORA) and any other interested parties to file a proposed schedule for additional verification and evaluation of post-1998 utility administered programs.

The Commission has the authority under Public Utilities Code Section 1708, after notice to all the parties and with an opportunity to be heard, to alter, or amend any order or decision made by it. This authority can be exercised pursuant to a party's petition to modify a decision or upon the Commission's own motion. For example, the Commission exercised this authority in D.95-05-043, our decision modifying the original Diablo Canyon Settlement, when it modified the pricing mechanism adopted in D.88-12-083 in a manner that reduced ratepayer costs by an estimated \$2.1 billion over the following five years and an estimated \$16 billion by the end of the pricing term in 2016.

The incentive payments for pre-1998 energy efficiency programs are shown in Attachment A. For administering ratepayer funded programs authorized in 1994-97, Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), Southern California Edison Company (Edison), and Southern California Gas Company (SoCalGas) forecasted incentive earnings for their shareholders of \$198,276,000. To date, \$155,854,389 in incentives have been awarded and the utilities are requesting an additional \$175,223,241 in shareholder earnings in this and future proceedings.

In D.94-10-059, the Commission stated that it wanted to adopt a level of earnings opportunity that was sufficient (and not too much) to off-set the regulatory and financial biases against demand-side management (or in favor of supply-side resources) that the utilities might have in procuring least-cost resources. (57 CPUC 2d at 51.) The mechanism adopted authorized payments

over a 7 to 10-year period based on a complex process of measuring long-term energy savings. Over the objections of ORA and The Utility Reform Network (TURN), the Commission set a target shareholder earnings level of 30% of long-term energy savings, without a cap, stating this was a reasonable level in light of the utilities assuming a downside risk of penalties.<sup>1</sup>

Almost seven years later, our experience under this mechanism shows that (1) no penalties have ever been assessed; (2) the adopted measurement protocols award incentives for events unrelated to any utility actions, such as technical degradation levels of customers' equipment; and (3) SDG&E projects its shareholders will earn a profit of 92.5% on its 1996 programs and 80.8% on its 1995 programs, and PG&E will earn 70.7% on its 1995 programs if the incentive mechanism remains unchanged.<sup>2</sup>

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<sup>1</sup> The potential for penalties was a significant factor cited by the Commission for the specific incentive mechanism adopted: "While we can not predict with any precision the downside risks resulting from the combined features of our adopted incentive mechanism, we do conclude that they will be substantially less than if we applied those features to each individual program, as we have done in the past... In our judgment, a 30% target earnings rate reasonably balances these considerations in light of the above considerations and our decision to include measurement costs in earnings calculations. At this rate, the utility will receive an opportunity to earn that is significantly higher than current earnings rates, reflecting our observations that the performance risks associated with DSM have been substantially shifted from ratepayers to shareholders." (57 CPUC 2d at 58.)

<sup>2</sup> As shown on Attachment A, these profit levels are calculated as a percentage of authorized program budgets, not as a percentage of energy savings. The average profit for all utilities' programs is 25.08%. Not reflected in this figure are projected incentive awards of approximately \$22 million, primarily to PG&E, for expenditures under these programs that were not funded until after 1997; if data were available to match these funds to program years, shareholder earnings levels would rise.

Based on this information, I find good cause exists to request parties to comment on whether the Commission should, based on these comments, reopen R.91-08-003/I.91-08-002 to modify the incentive mechanism adopted in D.94-10-059 for shareholder incentives before us in this and future AEAPs. This ruling should be served on the service list of R.91-08-003/I.91-08-002 to provide those parties, as well as all parties to this proceeding, an opportunity to comment.

This ruling also requests ORA, and any other interested party, file a proposed schedule for additional verification and evaluation of post-1998 utility administered programs. These programs are not under the incentive mechanism adopted in D.94-10-059. Rather, these programs are designed to achieve specified performance objectives set under market transformation milestones adopted as part of the Commission's efforts to implement electric restructuring under Assembly Bill 1890. Shareholder incentive payments range from 8-14% for 1998 and 1999 programs and 7% for 2000 programs and are awarded in one lump-sum payment.

In comments filed on November 14, 2001, ORA states that its verification efforts completed before suspension of the 2000 AEAP was limited to a cursory review of the milestones of each of the utilities and some on-site visits of a selected sample of participants in SoCalGas' nonresidential program. Given additional time, ORA states it could expand its verification efforts for these programs and also expand its verification efforts for programs under the 2001 AEAP. CEC also expressed interest in undertaking additional verification, but it is unclear from review of its comments whether it is willing to do this without the Commission changing the scope of review for these programs. We request ORA and any interested parties file a proposed workplan and schedule for

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additional verification of milestones under the scope of review set forth in the assigned Commissioner's previous scoping memos.

Therefore, **IT IS RULED**, that:

1. All interested parties shall file comments no later than March 27, 2002 and reply comments no later than April 10, 2002 on whether the Commission should, based on the comments, reopen Rulemaking (R.) 91-08-003/Investigation (I.) 91-08-002 to modify the incentive mechanism adopted in Decision 94-10-059 for the shareholder incentives before us in this proceeding and in future Annual Earnings Assessment Proceedings. Parties should cite all legal authority and the factual basis for their recommendations.

2. The Office of Ratepayer Advocates and other interested parties shall file no later than April 3, 2002, a proposed workplan and schedule for additional verification of milestone programs under the scope of review set forth in the assigned Commissioner's previous scoping memos.

3. The Commission's Process Office shall serve this ruling on all parties to R.91-08-003/I.91-08-002 in order to provide those parties, as well as parties to this proceeding, an opportunity to comment.

Dated March 13, 2002, at San Francisco, California.

/s/ CHRISTINE M. WALWYN

Christine M. Walwyn  
Administrative Law Judge

**ATTACHMENT A****SHAREHOLDER INCENTIVES UNDER MECHANISM ADOPTED IN D-94-10-059**

Program Year	Ratepayer Funded Program Budget (Gas & Electric)	Total Shareholder Incentives Based on Forecasted Energy Savings	Shareholder Incentives Paid to Date	Shareholder Incentives to be paid in 2000/2001 AEAP and in Future Years	Current Total Shareholder Incentive Level	Shareholder Incentive Level as a % of Ratepayer Funded Program Budget
<b>1994</b>						
PGE	\$241,822,000	\$17,266,000	\$15,147,000	\$5,052,000	\$20,199,000	8.35%
SCE	\$129,530,600	\$7,003,000	\$4,087,000	\$1,166,000	\$5,253,000	4.06%
SoCalGas	\$68,284,000	\$2,715,000	\$2,178,000	\$726,000	\$2,904,000	4.25%
SDGE (1)	\$45,763,000	\$4,360,000	\$6,251,881	\$2,047,629	\$8,299,509	18.14%
<b>All Utilities</b>	<b>\$485,399,600</b>	<b>\$31,344,000</b>	<b>\$27,663,881</b>	<b>\$8,991,629</b>	<b>\$36,655,509</b>	<b>7.55%</b>
<b>1995</b>						
PGE	\$123,658,000	\$57,786,000	\$31,780,000	\$55,615,000	\$87,395,000	70.67%
SCE	\$63,075,600	\$1,369,000	\$733,000	\$733,000	\$1,466,000	2.32%
SoCalGas	\$53,744,000	\$2,856,000	\$1,738,000	\$1,738,000	\$3,476,000	6.47%
SDGE	\$45,772,000	\$11,095,000	\$18,244,662	\$18,717,337	\$36,962,000	80.75%
<b>All Utilities</b>	<b>\$286,249,600</b>	<b>\$73,106,000</b>	<b>\$52,495,662</b>	<b>\$76,803,337</b>	<b>\$129,299,000</b>	<b>45.17%</b>
<b>1996</b>						
PGE	\$115,795,000	\$23,691,000	\$14,066,200	\$23,442,800	\$37,509,000	32.39%
SCE	\$76,667,000	\$6,897,000	\$6,769,000	\$6,773,000	\$13,542,000	17.66%
SoCalGas	\$40,610,000	\$1,418,000	\$992,000	\$992,000	\$1,984,000	4.89%
SDGE	\$48,283,000	\$10,419,000	\$20,524,278	\$24,142,107	\$44,666,385	92.51%
<b>All Utilities</b>	<b>\$281,355,000</b>	<b>\$42,425,000</b>	<b>\$42,351,478</b>	<b>\$55,349,907</b>	<b>\$97,701,385</b>	<b>34.73%</b>
<b>1997</b>						
PGE	\$115,795,000	\$36,503,000	\$15,725,000	\$16,461,000	\$32,186,000	27.80%
SCE	\$74,636,989	\$7,080,000	\$8,074,000	\$8,073,000	\$16,147,000	21.63%
SoCalGas	\$28,318,000	\$2,801,000	\$1,498,000	\$1,498,000	\$2,996,000	10.58%
SDGE	\$48,418,000	\$5,017,000	\$8,046,368	\$8,046,368	\$16,092,736	33.24%
<b>All Utilities</b>	<b>\$267,167,989</b>	<b>\$51,401,000</b>	<b>\$33,343,368</b>	<b>\$34,078,368</b>	<b>\$67,421,736</b>	<b>25.24%</b>
<b>All Utilities</b>	<b>\$1,320,172,189</b>	<b>\$198,276,000</b>	<b>\$155,854,389</b>	<b>\$175,223,241</b>	<b>\$331,077,630</b>	<b>25.08%</b>

## **CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated March 13, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

## **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.



